

THE KOREAN LEGAL SYSTEM; IT'S EASIER THAN YOU MIGHT THINK

BY MARK LEE/SEPT. 9, 2021



For most of us the move to Korea was, and is, filled with an amazing variety of pleasures and surprises. We drift around constantly encountering new situations and ideas that are so different from the things we are use to ... and most of the time these are wonderful and stimulating.

But every so often, unfortunately, we have less pleasant encounters. As a member of a linguistic and cultural minority we may have difficulty finding the right people or groups to assist us in resolving our problems, or we don't know the accepted procedures we need to follow to resolve them, or the problem is of such a nature that we need legal protection. We may feel frustration, anger, even fear, or helplessness. I had one such a situation occur to me.

My story started a little over two years ago when I discovered that a large, and very powerful, company had swindled me out of a good deal of money. I complained to the company at first, but was rebuffed harshly, so I entreated some of the various Korean civil government offices that I thought would deal with the issues involved, but again had no luck. Finally, with few other options, I decided that I probably needed to file a lawsuit against the company.

Now I was not a complete beginner, I had once filed a small claims lawsuit against a building contractor in Florida several years ago when I had been involved in a bicycle accident that contractor's workers had caused by leaving building debris in the street I was riding on. I was just a young college student at the time, but the process wasn't THAT hard, and I did win that case forcing the building company to repair my bike and pay my medical bills.

I wondered if Korea had a similar system and I was happy to discover that they did, and that the Korean Civil Court system was fairly easy to navigate. In addition, I found that the Korean Courts go out of their way to make the system as “user friendly” as is possible. They even have several special programs that offer a good deal of assistance to non-Koreans to help them navigate the system’s “ins and outs” and protect their rights.

My adventure started with some basic online research about the Korean court system, and I found that it was generally more open and accessible than the court system in the US ... and that there was a lot of information available in English. And I do not mean information written by foreigners in blog posts and articles (such as this one), but from the court system itself. I will include a short listing of several of the official website addresses that you may find informative and helpful at the end of this article.

My first stop was to figure out how and where to file my lawsuit. For this I went to the *Judicial Information for Foreigner and Immigrants (JIFI)* website which was created by the Supreme Court of Korea to assist the large, and still growing, ex-pat and immigrant communities here with the stated goal and belief that “everyone has the right to be protected equally under the laws of the Republic of Korea”. Here I was able to find a plethora of information and helpful links including a detailed breakdown of the rules of civil procedure, criminal procedure, family affairs, and litigation aid. Yes, you read that correctly ... the Republic of Korea can and does provide litigation aid to people who need it. And that includes non-Koreans as well.



According to the website, “The costs covered by litigation aid include stamp fees, service fees, attorney’s fees, travel expenses for witnesses, appraisal fees, and other costs set forth in the relevant laws incurred before or during the litigation.” Now of course there is an application procedure, and you have to qualify, but it is not complicated or difficult. Americans especially will likely be surprised how easy it is by comparison to typical US federal or state government application processes ... as I most certainly was. And to answer your question; yes, after I filed my lawsuit the court did provide some financial assistance to me.

So armed with this basic knowledge I drafted a very simple complaint and filed it with the court. After that I began digging into the details of Korean statutory law. I knew what the company had done was wrong, but I wanted to know what specific laws, if any, they had violated. This would give me stronger arguments I could use later. My research was aided by the *Korean Law Information Center*, a massive online legal library in both Korean and English. This was especially helpful as the



documents you file with the court must be in Korean ... so I could translate (with some friend's help) the "normal" language parts of my documents, and then quote the official Korean statute language for the "legal" parts as I needed.

After I had filed my suit, I shortly thereafter received a copy of the response that the company's attorneys had filed with the court. They were asking the court to transfer the case from Busan up to Suwon, as it would be closer to their attorney's offices. I quickly filed a short response with the court explaining that I was a single father of two children working full time at a university here in Busan and that the defendant was a multinational conglomerate with offices throughout Korea, and the world at large, and that such a transfer would be unfair. The court agreed and the case remained in Busan.

Then Covid-19 hit...and everything slowed way, way, way down. The court seemed to be doing its best to try and keep things moving but there really wasn't too much anybody could do so the case, like thousands of others, started to linger. I used the time to do further research on Korean civil procedure and law in general. I discovered that unlike the United States where legal disputes are a "winner take all" and a "win at any cost" fight ... Korean law seems to focus more on what I have started calling, "social harmony".

Most surprisingly I found this especially true in the area of criminal law. Like many American ex-pats I had heard about cases where a fight breaks out and someone gets arrested and is pressured to pay damages to the victim ... some foreigners derisively referring to this as "blood money" or "blackmail". As it turns out, nothing could be further from the truth.



The truth is that in Korea, the person injured is considered the "victim" and the goal is to make the victim whole again after the crime had been committed against them. So, in many cases this takes the form of the perpetrator admitting his guilt and paying restitution directly to the victim in exchange for the victim agreeing not to press charges against the perpetrator. While your thoughts and feelings on this may vary, the idea is that both parties get something ... to restore

the "social balance" if you will, and avoid the creation of personal vendettas so that society can resume without any serious disruptions.

This is very different than the United States where, contrary to most people's understanding ... the person injured is NOT the victim. They are what prosecutors call, "a complaining witness". In the US, it is the STATE that is the victim, since it was the state's laws that were violated. This is the reason that most defendant's end up going to jail or prison and that restitution to the injured person is so difficult to get. What motivation does a defendant have to quickly pay restitution to the person they injured if they are going to go to prison anyway? Oh, and let us not forget that the injured party cannot file a civil lawsuit against a criminal defendant until AFTER the criminal trial has concluded. So there is that too.

Anyway, my case is far from over, and to be honest, I am not entirely sure when it will be. We will be having a trial at some point this year and it will be what in the US is called a "bench trial" meaning that it is decided not by a jury, but by the judge. As an American, I must confess that I do feel a knee-jerk discomfort with this as I prefer the idea of a jury trial. But I do not really know why. Six unqualified

strangers who know nothing of the law, or a single well educated judge? Hhhmmmm ... I struggle with my own emotions on this issue, and am often at odds with my own mind. But like it or not, that is the system in use here, so we will proceed on.

In spite of everything, I have to admit there is a very small part of me that is enjoying this journey. I think I have learned more, and have a better understanding, of Korean culture and the Korean mindset than I could have in any other way. And while I am confident in the outcome of this case the possibility, however remote, does exist that I may not prevail ... but even that does not really frighten me too much as I have studied the appeals process, which looks interesting, and I think I could learn a few new things there as well.

So if you have been wronged, abused, or otherwise maltreated know that the Korean Judicial System may be able, and certainly will try, to assist you in correcting whatever injury was done you. It does not matter if the defendant is an individual roughian, or a multibillion dollar international conglomerate...the Korean Judicial System protects all residents of the Republic alike.

If you would like to ask me any questions, or there is anything in this story I can clarify for you, please feel free to drop me an email at <markleebusan@gmail.com> and I will try to get back to you. Please understand that until it is concluded I cannot discuss the details of my present case, but I certainly can do my best to help you find good resources that can assist you with whatever issues you are working on.

Some Useful Sites:

1.) **Judicial Information for Foreigners and Immigrants;**

<https://jifi.scourt.go.kr/foreigner/main/Main.work>

2.) **National Law Information Center;**

<https://www.law.go.kr/LSW/eng/engMain.do>

3.) **Korean Legislation Research Institute;**

https://elaw.klri.re.kr/eng_service/main.do

4.) **The Supreme Court of Korea;**

<https://eng.scourt.go.kr/eng/main/Main.work>

5.) **Korean Law via the Internet;**

http://koreanlii.or.kr/w/index.php/Main_Page

6.) **The Library of Congress;**

<https://www.loc.gov/item/guide-to-law-online/republic-of-korea/>